

MEMORANDUM OF UNDERSTANDING

BETWEEN THE

U.S. DEPARTMENT OF HOMELAND SECURITY,
NATIONAL PROTECTION AND PROGRAMS DIRECTORATE
FEDERAL PROTECTIVE SERVICE

AND

CITY OF CALEXICO POLICE DEPARTMENT

REGARDING CALIFORNIA PEACE OFFICER ENFORCEMENT AUTHORITY FOR
CERTIFIED FEDERAL PROTECTIVE SERVICE PERSONNEL

1. PARTIES

The Parties to this Memorandum of Understanding (MOU) are the U.S. Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), Federal Protective Service (FPS) and the City of Calexico Police Department (CPD).

2. AUTHORITIES

This MOU is authorized under the provisions of:

- a. Title 40, United States Code, Section 1315, *Law Enforcement authority of Secretary of Homeland Security for protection of public property*;
- b. U.S. Department of Justice Attorney General *Guidelines for the Exercise of Law Enforcement Authorities by Officers and Agents of the Department of Homeland Security Under 40 U.S.C. § 1315*, dated February 18, 2005;
- c. DHS Delegation Number 17001, Revision No. 1, *Delegation to the Under Secretary for National Protection and Programs*, dated October 25, 2013;
- d. NPPD Delegation Number 17001.101, *Delegation to the Director for the Federal Protective Service*, dated May 10, 2016;
- e. FPS Director Memorandum, *Delegation of Authority to Enter Into and Sign Law Enforcement Mutual Support Agreements with Other Federal Law Enforcement Agencies, and State and Local Governments and Law Enforcement Agencies*, dated July 26, 2011;

- f. Section 832, California Penal Code; and
- g. Section 830.8(b), California Penal Code.

3. PURPOSE

The purpose of this MOU is to facilitate California Peace Officer law enforcement authority for certified FPS personnel, and establish procedures for the coordination of law enforcement activities between FPS and the CPD relating to the protection of federal property and persons on the property located within the City of Calexico, California. This MOU is only applicable to FPS law enforcement personnel and does not apply to FPS contract security officers (a/k/a protective security officers).

4. DEFINITIONS

The following definitions apply to this MOU:

- a. Exclusive Jurisdiction: Only the federal government has law enforcement authority and no reservations have been made to the state, except that state and local officers have the authority to serve criminal and civil process resulting from activities that occurred outside the areas of exclusive jurisdiction.
- b. Concurrent Jurisdiction: Both the state and the federal government have law enforcement authority and may enforce their respective criminal laws and prosecute those that violate the law.
- c. Proprietary Jurisdiction: The state has primary law enforcement authority except that the federal government can enforce federal laws of generality (those not limited in statute to special maritime and territorial jurisdiction) and federal regulations.

5. SCOPE

The scope of this MOU applies to the protection of federal property and persons on the property located within the City of Calexico, California. The parties agree that FPS will only enforce applicable provisions of the California Penal Code in furtherance of the protection of federal property and persons thereon located in the vicinity of federal property.

6. RESPONSIBILITIES

FPS shall:

- a. Maintain a list of FPS law enforcement personnel who have satisfied the training requirements of Section 832 of the California Penal Code and provide said list to CPD upon request.
- b. As consistent with federal law, exercise primary law enforcement responsibility for property owned or controlled by the federal government under exclusive or concurrent federal jurisdiction within the City of Calexico, California.
- c. As consistent with federal law, support local law enforcement for all property owned or controlled by the federal government under proprietary jurisdiction.
- d. In conjunction with the protection of federal property owned or possessed by the federal government and the persons thereon, enforce state and local law within that property or on any street, sidewalk, or property adjacent thereto within the City of Calexico, California, subject to the availability of FPS law enforcement personnel who obtain certification as Peace Officers in accordance with Section 830.8(b) of the California Penal Code.

CPD shall:

- a. As consistent with Section 830.8(b) of the California Penal Code, provide written consent for the exercise of California Peace Officer law enforcement authority by designated FPS law enforcement personnel who are certified in accordance with Section 832 of the California Penal Code to, in conjunction with the protection of federal property owned or possessed by the federal government and persons thereon, enforce applicable state and local laws on federal property owned or possessed by the federal government, or on any street, sidewalk, or property adjacent thereto within the City of Calexico, California, where the Calexico Police Department has primary jurisdiction.
- b. Exercise primary law enforcement responsibility for streets, sidewalks, or property adjacent to property owned or occupied by the federal government under the jurisdiction of the State of California within those areas of the City of Calexico, California, where the CPD has primary jurisdiction.

7. POINTS OF CONTACT

The parties designate the following points-of-contact (POCs) for matters related to this MOU:

- a. The FPS POC is Deputy Regional Director Timothy G. McHugh either via telephone at (415) 522-3448, or email at Timothy.G.McHugh@hq.dhs.gov.
- b. The CPD POC is Lt. Jesus J. Serrano either via telephone at (760) 890-8986, or email at serranoj@calexico.ca.gov jserrano@calexicopd.org

8. OTHER PROVISIONS

The parties recognize the following other provisions related to this MOU:

- a. Nothing in this MOU confers general law enforcement authority on FPS law enforcement personnel outside the normal scope of FPS law enforcement duties and the authority found in 40 U.S.C. § 1315. FPS law enforcement personnel who obtain Peace Officer status by virtue of this MOU may only exercise that authority in conjunction with their official duties in relation to the protection of federal property owned or possessed by the federal government and the persons thereon.
- b. Nothing in this MOU is intended to conflict with any current law, regulation, or policy directive of DHS, NPPD, FPS, any other federal agency, or the CPD. If a term of this MOU is inconsistent with such existing authority, then that inconsistent term shall be severed as invalid; however, all remaining terms and conditions of this MOU shall remain in full force and effect.
- c. This MOU neither constitutes the obligation of monetary funds, nor promises indemnification by either party. Nothing in this MOU authorizes, or is intended to obligate, the parties to expend, exchange, or reimburse funds, services, or supplies, or transfer or receive anything of value, except as incorporated into an interagency agreement that complies with all applicable federal law, to include 31 U.S.C. § 1501 and the Economy Act. Further, no provisions of this MOU will be interpreted to require obligation or payment of funds in violation of 31 U.S.C. § 1341, the Anti-Deficiency Act.
- d. Nothing in this MOU shall be construed to create an agency relationship between the parties. Rather, the parties retain all rights, privileges, immunities, and defenses provided under law, and there shall be no joint or several liabilities for any action taken by either party pursuant to this MOU.

9. EFFECTIVE DATE

The terms of this MOU become effective upon the date of signatures of both parties.

10. MODIFICATION

This MOU may only be modified upon the mutual written consent of duly authorized representatives of the parties.

11. TERMINATION

The terms of this MOU, including any modifications pursuant to Section 10, shall remain in effect until either party, upon 30 days written notice to the other party, requests termination of this MOU.

APPROVED BY:

For the Federal Protective Service



Mario A. Canton
Regional Director, Region 9
Federal Protective Service

Date: 5/11/2018

For the City of Calexico Police Department



Gonzalo C. Gerardo
Chief of Police, City of Calexico
Calexico, California

Date: 5/10/18